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CHARLES ELMORE CROP
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United States of America

In the

Supreme Court of the United States

No. 659

THE FRATERNAL ORDER OF POLICE, a corporation not for profit, organized and existing under the laws of the State of Michigan, also JOSEPH JOHNSON, LODGE No. 102 OF THE CITY OF LANSING, MICHIGAN, a subordinate Lodge of the Fraternal Order of Police,
Plaintiffs and Petitioners,

vs.

D. D. HARRIS, ELMER HAMMOND, LAWRENCE DROLETT, ALOYSIUS GROSS, C. E. CARTER, C. I. HUNTER, C. BOELIO, CHAS. VAN NOTE, as Members of the Lansing City Police and Fire Commission as provided by the Lansing City Charter,
Defendants and Respondents

CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

BRIEF IN OPPOSITION TO PETITION TO WRIT OF CERTIORARI

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The Bill of Complaint was amended so as to state that defendants threaten any person who disobeys the order, in question, with dismissal or other action (R. 5). Such a threat was immediately denied by Mr. Campbell (R. 25).

On page 9 of the Petition the allegation is made, that because of this threat the First Amendment is violated. That such a threat was made, was denied by defendants' answer (R. 23) but no proof of such a threat was ever offered, so therefore any reference thereto should be deleted from the Petition and Bill.

Before discussing whether a Federal question is involved, so as to give this Court jurisdiction, we shall briefly consider Petitioners' claim that the resolution barring superior officers from membership and prohibiting associate members, is arbitrary and unreasonable. Police officers are, of necessity, subject to rigid discipline because they maintain law and order. They must be impartial in the performance of their duty and they cannot be subject to outside influence and under no temptation to yield to the dictation of others. As a general rule Courts hesitate to question the acts of municipal officials unless the invalidity of such acts are clearly established. Where discretion is fixed in an administrative board the Courts will not interfere unless the action taken is unauthorized or in violation of law. No person can claim employment in the Police Department, as a matter of right, but when so employed he is subject to the reasonable rules as made by the governing Board.

The Board has not determined that policemen may not join the Fraternal Order of Police, but that a superior officer may not join, fearing evidently that such association would hinder officers in their duties and render discipline by them ineffective or impossible. It should be borne in mind that no superior officer is here complaining nor is any person objecting that he is being denied associate or honorary membership. As the trial Court said "none of the individuals affected is a party to the action" (R. 48).

The Order permits associate or honorary members at an annual fee of from $5.00 to $25.00 for which they get a membership card and an emblem to be attached to the rear of their automobile. In Niles, Michigan, a lodge of 13 members has 100 associate members (R. 41). Justice Bushnell said "One would be naive, indeed, to assume that such automobile emblem would not carry with it the intimation of special privileges to associate members" (R. 77). Such a possibility is sufficient reason for the adoption of the rule by defendant Board .

Many cases similar to the one at bar have been before the Courts. In *University of Mississippi v. Waugh,* 237 U. S. 589, the Court upheld a statute abolishing fraternities in the State University, and prohibiting membership therein. The Court stated:

> "It is said that the fraternity to which complainant belongs is a moral and of itself a disciplinary force. This need not be denied. But whether such membership makes against discipline was for the State of Mississippi to determine. It is to be remembered that the University was established by the State and is under the control of the State, and the enactment of the statute may have been induced by the opinion that membership in the prohibited societies divided the attention of the students and distracted from that singleness of purpose which the State desired to exist in its public educational institutions."

The above decision was followed by the Supreme Court of Michigan in *Steele v. Sexton,* 253 Mich. 32, in which the validity of an Act seeking to prohibit the joining of fraternities by high school students was upheld.

In *McCarthy v. Couzens,* 214 Mich. 501, the validity of a decision of the Pension Committee of the Detroit Fire Department was before the Court and it was said:

> "In passing upon the issue of fact before the commission at its hearing of April 20, 1916, its action is not shown to have been fraudulent, arbitrary or capricious. In the absence of such showing the action of the commission must be deemed final and we have no right to interfere by mandamus, no right to substitute our judgment or discretion for that of the commission."

A similar ruling was made in *Kerwin v. Rettie,* 294 Mich. 308, where a resolution of the Port Huron City Commission, reducing a pension, was before the Court.

In the case of *Hutchinson v. Magee,* 278 Penn. State Reports 119, the Director of Public Safety of the City of Pittsburg issued an order that all officers of the Fire Bureau belonging to an association of firemen should sever their connections therefrom and it was held that the discretion of the Director, being based upon a reasonable ground, was final.

In the case of *Carter v. Thompson,* 164 Va. 312, the Director of Public Safety of Norfolk issued an order prohibiting membership in the International Association of Fire Fighters and the order was sustained as being within his discretion. A similar case was before the Texas Court in *McNatt v. Lawther,* 223 S. W. 503, with the same result.

To the same effect are *San Antonio Fire Fighters' Union v. Bell,* (Tex.), 223 S. W. 506; *Fursman v. Chicago,* 278 Ill. 318; *Seattle High School Chap. No. 200 v. Sharples,* 159 Wash. 424, 293 Pac. 994, *Frederick v. Owens,* 35 Ohio Circuit Court Reports 538. In the last three cases, the question as to the validity of actions of Boards of Education in the adoption of resolutions forbidding membership by teachers in labor unions was upheld for the reason that such matters are within the discretionary authority

of the Boards of Education concerned. Consequently, the Courts had no authority to interfere.

Petitioners claim invasion of their rights under the equal protection and due process clause of the 14th Amendment. The grounds for appeal from the trial Court to the Michigan Supreme Court did not raise these constitutional questions (R. 15). The trial Court held there was no constitutional questions involved but, "rather the proposition here involved is solely of departmental discipline" (R. 51). The Supreme Court's opinion did not discuss the constitutional question, apparently considering it was not involved.

Petitioners cite the case of *Home Telephone Company v. Los Angeles,* 227 U. S. 278, 33 Sup. Ct. 312, 57 Law. Ed. 510, which merely held that a Federal Court had jurisdiction of a suit to test the validity of telephone rates fixed by city ordinance, alleged to be confiscatory and repugnant to the due process clause of the 14th Amendment. The case has no bearing on the matter at bar.

Counsel cite, *People v. City of Chicago,* 199 Ill. App. 362, as authority that a rule prohibiting membership of teachers in a labor union was violative of due process. On the appeal found in 278 Ill. 318, the Court said, "It is no infringement upon the constitutional rights of any one for the board to decline to employ him as a teacher in the schools * * *. The decree of the Superior Court is reversed and the cause is remanded, with directions to dissolve the injunction and dismiss the bill." Therefore counsel herein has carelessly read the decision on appeal or is attempting to mislead this Court.

The contention of unconstitutionality has been answered by this Court in the case of *Univ. of Miss. v. Waugh, supra,* wherein it was claimed that the statute prohibiting fraternity membership was void because violative of the

14th Amendment and denied plaintiff the equal protection of law and deprived him of property and property rights without due process. The Court said:

> "The next contention of complainant has various elements. It assails the statute as an obstruction to his pursuit of happiness, a deprivation of his property and property rights and the privileges and immunities guaranteed by the Constitution of the United States. Counsel have considered these elements separately and built upon them elaborate and somewhat fervid arguments, but, after all, they depend upon one proposition; whether the right to attend the University of Mississippi is an absolute or conditional right * * *. This being the power of the legislature under the constitution and laws of the State over its institutions, maintained by public funds, what is urged against its exercise to which the Constitution of the United States gives its sanction and support by its prohibition? * * * It is very trite to say that the right to pursue happiness and exercise rights and liberty are subject in some degree to the limitations of the law and the condition upon which the State of Mississippi offers the complainant free instruction in its University, that while a student there, he renounce affiliation with a society which the State considers inimical to discipline, finds no protection in the 14th Amendment."

In *Steele v. Sexton, supra,* the Michigan Court citing the aforesaid case as authority, held that a statute withholding credits from a high school student, who was a member of a fraternity, did not violate the due process clause of the 14th Amendment.

In *Seattle v. Sharples,* 159 Wash. 424, 293 Pac. 994, a resolution of a School Board that no teacher be employed or continue in employment while a member of a teachers

association was likewise held not to be violative of the 14th Amendment.

To summarize, the action of the Board in resolving that no superior officer of the Lansing Police Department be a member of the Fraternal Order of Police and that the Lansing Lodge have no associate or honorary members, was not arbitrary, was a matter to be determined in the sole discretion of the Board and does not violate any constitutional provisions.

We therefore ask that the application be denied.

Respectfully submitted,

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